



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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June 11, 2009

CERTIFIED MAIL 7003 1680 0007 1588 7586

Mr. Cody Easterday
Easterday Ranches Inc.
1816 North 20th Avenue
Pasco, WA 99301

Dear Mr. Easterday:

Re: Application for Change/Transfer under Ground Water Certificate No. G3-00101C

On April 10, 2009 our office received from the Franklin County Water Conservancy Board (Board) a Record of Decision and Report of Examination for the above referenced application for change/transfer of Ground Water Certificate No. G3-00101C (the Pepiot water right). In accordance with RCW 90.80.080 the Department of Ecology (Ecology) has reviewed the Record of Decision and Report of Examination and has considered all comments, protests, objections, and other relevant information submitted to Ecology regarding the proposed change/transfer.

Ecology has **modified** the decision of the Board and the proposed change/transfer of the water right is **approved** under the following conditions:

Summary of Ecology's Final Order

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE 500	MAXIMUM ACRE- FT/YR 316	TYPE OF USE, PERIOD OF USE 137 gallons per minute, 66 acre-feet per year for Stock Drinking Water; 363 gallons per minute, 250 acre-feet per year for Stock Cooling, Dust Control and other associated feedlot uses, continuously year round				
SOURCE One (1) Well			TRIBUTARY OF (IF SURFACE WATER)				
AT A POINT LOCATED: PARCEL NO.	$\frac{1}{4}$ SW$\frac{1}{4}$	$\frac{1}{4}$ SW$\frac{1}{4}$	SECTION 13	TOWNSHIP N. 12 N.	RANGE 31 E	WRIA 36	COUNTY. Franklin
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED AS APPROVED BY THE BOARD							
S$\frac{1}{2}$ of Section 13 and All of Section 24, Both in T. 12 N., R. 31 E.W.M. and limited to the direct feedlot site area							
PARCEL NO.	$\frac{1}{4}$	$\frac{1}{4}$	SECTION	TOWNSHIP 12 N.	RANGE 31 E.		



Consideration of Comments Received by Ecology

On April 23rd, 2009, a meeting was held between representatives of Five Corners Family Farmers (FCFF), Center for Environmental Law & Policy (CELP), and Ecology. The meeting was held pursuant to WAC 173-153-150, in response to a request from FCFF and CELP, who requested a meeting with Ecology to discuss several concerns and issues they identified regarding the Board's decision to approve the proposed change/transfer of Ground Water Certificate No. G3-00101C. The following is a summary of each of the issues raised at that meeting, along with Ecology's formal response to such issues. The issues are divided into two broad categories: (1) Process Issues, and (2) Technical Issues, which are discussed below, respectively.

Process Issues

State Environmental Policy Act, RCW 43.21C (SEPA) Requirements

CELP and FCFF assert that Franklin County's Mitigated Determination of Non-Significance (MDNS) issued on August 4, 2008, in relation to the Easterday Ranches, Inc.'s (Easterday) proposed cattle feedlot operation (the Easterday project), is insufficient to serve as a basis for meeting SEPA requirements for the proposed Pepiot water right transfer. They believe the public notification of the MDNS was inadequate because the legal notice was only published in the Franklin County Graphic, a newspaper with limited distribution in Franklin County. They also note that Ecology sent letters and e-mails to Franklin County to express Ecology's concerns with the adequacy of the SEPA process.

Ecology's Response: The Franklin County Graphic appears to be a newspaper with general circulation in the project area. Ecology acknowledges the original SEPA documents did not contain all information necessary to adequately define the proposed Easterday project, particularly information regarding the water storage reservoir. Therefore, Ecology asked both Easterday and Franklin County to submit additional information to fill the data gaps in the SEPA documents. On May 11, 2009, Franklin County submitted an addendum to the original Environmental Checklist, which contained the information that Ecology requested regarding the water storage reservoir. In addition, even though the water right transfer at issue in this modification decision is exempt from SEPA under WAC 197-11-800(4), information related to drilling the new well for the project was included in the original environmental checklist and MDNS issued by the county. The proposed water right change/transfer will have no significant environmental impact. Furthermore, the groundwater well associated with this change/transfer has already been constructed.

Conflict of Interest, RCW 90.80.120

CELP and FCFF assert that Mr. Darryll Olsen's involvement in preparation of the Board's Report of Examination is in violation of the "conflict of interest" provision under

the Water Conservancy Board statute, RCW 90.80.120. Specifically, they assert that a conflict of interest stems from Mr. Olsen's role in serving as the Principal Consultant/Representative for the Columbia-Snake River Irrigators Association.

Ecology's Response: Ecology believes that Mr. Olsen's role in preparation of the Report of Examination is not a conflict of interest, as defined in RCW 90.80.120.

The Board's Consideration of Comments and Evidence

CELP and FCFF assert that the comments they submitted to the Board were not all adequately addressed in the Board's Report of Examination, particularly the information in the report prepared by Landau Associates, Inc. on behalf of CELP and FCFF.

Ecology's Response: In the last paragraph on page 6 of the Board's Report of Examination it is stated: "The board accepted and considered all oral or written comments or protests in evaluating the application, in accordance with chapter 90.80 RCW, and WAC 173-153." Ecology understands that the Board considered all comments and protests, including the Landau report. Further, in conducting its review of the Board's Report of Examination, Ecology staff also considered the Landau report, and Ecology does not believe that the Landau report contains any information that would change the decision made by the Board in the Report of Examination.

Concerns Regarding the Board's Open Public Meeting on April 7, 2009

CELP and FCFF assert that the comments they submitted to the Board on April 2, 2009, were not considered by the Board. They contend they were not notified of an apparent special meeting of the Board held on April 7, 2009.

Ecology's Response: The Board appears to have addressed the comments that it received from CELP and FCFF on page 6 of the Report of Examination. Pursuant to RCW 42.30.080, a special meeting may be called at any time by the presiding officer of a Water Conservancy Board or by a majority of the members of a Board by delivering (personally, by mail, by fax, or by electronic mail) written notice to each Board member and to local media who have filed a written request for notification of any special meetings. Ecology called Mark Nielson, co-author of the Report of Examination, to inquire if a special meeting had been held on April 7, 2009. Mr. Nielson confirmed that a meeting was held to address comments received at the Board's public meeting on April 2, 2009.

Ecology's Role in the Board Decision Process

CELP and FCFF noted that the Board's Report of Examination contains several statements such as "WADOE staff concurred with the observations discussed in this ROE...", suggesting that Ecology approved elements of the Board's decision before the Ecology reviewed the Report of Examination. CELP and FCFF raised questions about what role Ecology played in the Board's decision-making process.

Ecology's Response: During preparation of Report of Examination, the Board and consultants for the applicant requested technical assistance from Ecology, particularly regarding issues related to impairment and the same body of public groundwater. Ecology provided technical assistance, consistent with RCW 90.80.055(1)(d), regarding these issues, but did not formally concur with or endorse the Board's observations or decision.

Technical Issues

Historical Beneficial Use of the Pepiot Water Right

CELP and FCFF assert that the Pepiot water right proposed for change/transfer was not historically used in the annual quantity that was authorized by the Board's change/transfer decision. Some of the FCFF members submitted written statements to Ecology claiming that less water was pumped and beneficially used during the years between 1996 and 2000 than the amount the Board's Report of Examination confirmed was actually pumped. CELP and FCFF requested that Ecology further investigate historic beneficial use of the Pepiot right for the years in question.

Ecology's Response: Ecology has obtained power consumption records for the Pepiot well for the years identified (1996-2000). The power records support the quantity of water authorized for irrigation purposes and is consistent with the water duty for the crops known to be grown at the Pepiot farm. The power records also confirm the Board's decision regarding the quantity of water available for change/transfer to the Easterday project site.

Impairment of Existing Water Rights

CELP and FCFF assert that pumping water from the proposed ground water well at the Easterday project site may result in impairment of existing water rights.

Ecology's Response: Ecology staff reviewed the impairment analysis conducted by the applicant's consultant. Ecology staff also conducted an independent impairment analysis in relation to the potential impacts to existing water rights as a result of the proposed change/transfer of the Pepiot water right for the Easterday project. Ecology concurs with the Board's decision that approval of the change/transfer will not cause impairment of any existing water rights.

Same Body of Public Groundwater

CELP and FCFF assert that water pumped from the new source well at the Easterday project site will not be withdrawn from the same body of public ground water as from the Pepiot irrigation well.

Ecology's Response: Ecology concurs with the Board's same body evaluation in support of the Report of Examination. Ecology believes the water pumped from the Columbia River Basalt Group at the proposed point of withdrawal for the

Easterday source well is from the same body of ground water as pumped from the Columbia River Basalt Group at the Pepiot irrigation well.

Consideration of Ground Water Well Information

CELP and FCFF assert that the Board did not consider all available ground water well information when performing the impairment analysis for the Report of Examination.

Ecology's Response: Ecology believes that the Board considered all pertinent ground water well data in making its decision. Ecology staff also considered all applicable ground water well information when conducting an independent impairment analysis for the proposed change/transfer. Ecology's independent impairment review included consideration of the information contained in the Landau report.

Safe Sustaining Yield and Reasonable and Feasible Pump Lift Requirements

CELP and FCFF claim that basalt aquifers throughout the area near the proposed feedlot are in a state of decline. They believe that an increase in aggregate pumping will draw down the aquifers even further. They contend that exercising the former Pepiot water right at the new place of use will violate safe sustaining yield and reasonable and feasible pump lift requirements found in the state water code (RCW 90.44.130 and RCW 90.44.070).

Ecology's Response: The quantity of water pumped from the new Easterday well will be the same as the quantity of water historically pumped from the Pepiot well. Therefore, transfer of the water right will not increase aggregate pumping from the Columbia River Basalt Group in the area and will not violate the safe sustaining yield or reasonable and feasible pump lift requirements in the water code.

Water Availability

CELP and FCFF contend that water is not legally or physically available at the proposed Easterday site, and therefore the application must be denied (RCW 90.03.290 and RCW 90.44.020).

Ecology's Response: RCW 90.03.290 and RCW 90.44.020 refer to applications for appropriation of new water rights. The proposed action is a change/transfer of an existing water right, for which a prior decision was made that water was available for appropriation and Ecology believes that water is physically and legally available at the new well site.

Enrollment in Conservation Reserve Program

Some FCFF members believe the Pepiot well historically did not produce enough water to irrigate crops at the original place of use authorized by the Pepiot water right, and that was the reason the property was enrolled in the Conservation Reserve Program (CRP).

Ecology's Response: Ecology does not evaluate the specific reasons for why a property owner enrolls land in the Conservation Reserve Program. However, Ecology does consider whether there is sufficient cause for non-use of a water right to be excepted from relinquishment under RCW 90.14.140(1)(f), which applies if there are: "Federal laws imposing land or water use restrictions either directly or through the voluntary enrollment of a landowner in a federal program implementing those laws, or acreage limitations, or production quota." Therefore, Ecology has determined that the Pepiot irrigated land was enrolled in the CRP from year 2000 until the present, and that is sufficient cause from relinquishment under RCW 90.44.140(1)(f) during that period of time.

Water Required for Dust Control

CELP and FCFF assert that the quantity of water allocated for dust control in the Board's decision will not be adequate during construction of the facility. Members of FCFF provided photos of soil drifting and dust caused by farming practices in the area surrounding the proposed Easterday project site.

Ecology's Response: The Board's decision allocates 250 acre-feet of water per year for dust control purposes at the proposed project site. The applicant's consultants provided the following engineering estimates of water demand for sprinkler dust control: 374,000 gallons per day (175.6 ac/ft) during May 1 through September 30 (the dry season), with a maximum allowance of 455,000 gallons per day (213.6 ac/ft). The quantity allocated under the Board's decision will adequately cover the estimates required to control soil drifting and dust at the project site.

Ecology Modifications to the Board's Decision

On page 1 of the Report of Examination under the heading "**SEPA**" the first sentence states the proposed water right change is "marked" not exempt. **Ecology modifies this sentence of the Board's Report of Examination to be "marked" exempt. The ground water right's certificated quantity falls under the categorical exemption of 2,250 gallons per minute under WAC 197-11-800(4).**

On page 1 of the Report of Examination under the heading "**SEPA**" the second sentence reads: "Change request is covered under SEPA by the Franklin County Planning and Building Department's Mitigated Determination of Non-Significance issued August 4, 2008. (see attachment)." **Ecology deletes this sentence. The determination by the Franklin County Planning and Building Department was made five months prior to the submittal of this application for change/transfer to the Franklin County Water Conservancy Board. However, the environmental checklist submitted to the Franklin County Planning and Building Department on July 28, 2008 did contain information related to the ground water use associated with the feedlot project.**

On page 2 of the Report of Examination under the heading **“Water Board Decision”** and sub-heading **“MAXIMUM GAL/MINUTE”** reads: “500 gpm, Up to 137 gpm for Stock Drinking Water; up to 363 gpm for Stock Cooling and Dust Control, and other stock watering needs.” **Ecology modifies this to read: A total of 500 gallons per minute: 137 gallons per minute for Stock Drinking Water; 363 gallons per minute for Stock Cooling and Dust Control, and other associated feedlot uses.**

On page 2 of the Report of Examination under the heading **“Water Board Decision”** and sub-heading **“MAXIMUM ACRE-FT/YR”** reads: “316, Up to 66 acre-ft. for Stock Drinking Water; up to 250 acre-ft. for Stock Cooling and Dust Control, and other stock watering needs.” **Ecology modifies this to read: A total of 316 acre-feet per year: 66 acre-feet per year for Stock Drinking Water; 250 acre-feet per year for Stock Cooling and Dust Control and other associated feedlot uses.**

On page 2 of the Report of Examination under the heading **“Water Board Decision”** and sub-heading **“TYPE OF USE, PERIOD OF USE”** reads: “Stock Water Purposes defined by PCHB 01-073 (2001): To include, but not limited to, stock drinking, feeding, cleaning stock stalls, washing stock, washing the equipment used to feed and milk stock, controlling dust around stock, and cooling stock.” **Ecology modifies this section because Ecology does not agree that all of the uses listed in the application and on page 2 of the Water Board Decision under “TYPE OF USE, PERIOD OF USE” section qualify as “stock watering purposes.” However, because the Board’s decision specifically authorizes 66 acre-feet per year for stock drinking water, the remaining 250 acre-feet per year authorized by the Board can be used for the other uses listed in the Board’s decision that are not necessarily “stock watering purposes.”**

The modified “TYPE OF USE, PERIOD OF USE” shall read: 137 gallons per minute, 66 acre-feet per year for Stock Drinking Water; 363 gallons per minute, 250 acre-feet per year for Stock Cooling, Dust Control and other associated feedlot uses, continuously year round.

On page 3 of the Report of Examination under the heading **“DEVELOPMENT SCHEDULE”** and sub-heading **“BEGIN PROJECT BY THIS DATE”** reads: “Immediately”. **Ecology modifies this to read: Begun.**

On page 4 of the Report of Examination under the heading **“SEPA”** the sentence reads: “Change request is covered under SEPA review by the Franklin County Planning and Building Department’s Mitigated Determination of Non-Significance issued August 4, 2008. (see attachment).” **Ecology deletes this sentence. The determination by the Franklin County Planning and Building Department was made 5 months prior to the submittal of this application for change/transfer to the Franklin County Water Conservancy Board. However, the environmental checklist submitted to the Franklin County Planning and Building Department on July 28, 2008 did contain information related to the ground water use associated with the feedlot project.**

On page 4 of the Report of Examination under the heading "Issues Raised by WADOE" the last sentence of the second paragraph reads: "WADOE staff concurred with the observations discussed in this ROE, as related to impairment and same body of water for management purposes." **Ecology deletes this sentence because the Board's recommendation is based on the Board's findings. As discussed above, Ecology offered technical assistance to the Board regarding these issues but did not formally concur with or endorse the Board's findings or observations.**

On page 5 of the Report of Examination under the heading "Board's analysis" the last sentence of #3 reads: "The FCWCB staff have discussed explicitly the Pepiot water right with WADOE ERO staff, and no issue related to the above has been highlighted by the WADOE staff." **Ecology deletes this sentence because the Board's recommendation is based on the Board's findings. Ecology offered technical assistance to the Board regarding some issues raised by the Board, but the Department did not formally concur with or endorse the Board's findings.**

On page 5 of the Report of Examination under the heading "Board's analysis" the second sentence of #4 reads: "The FCWCB staff have discussed explicitly the Pepiot water right with WADOE ERO staff, and no issue related to the above has been highlighted by the WADOE staff." **Ecology deletes this sentence because the Board's recommendation is based on the Board's findings. Ecology offered technical assistance to the Board regarding some issues raised by the Board, but the Department did not formally concur with or endorse the Board's findings.**

On page 5 of the Report of Examination under the heading "Board's analysis" the fifth sentence of #4 reads: "The impairment analysis revealed no issues relative to impairment; the WADOE staff indicated concurrence with the no-impairment observation." **Ecology modifies this sentence to read as follows: The impairment analysis revealed no evidence of impairment to existing water rights.**

On page 5 of the Report of Examination under the heading "Board's analysis" the second sentence of #6 reads: "The FCWCB staff have discussed explicitly the Pepiot water right with WADOE ERO staff, and no issue related to the above has been highlighted by the WADOE staff." **Ecology deletes this sentence because the Board's recommendation is based on the Board's findings. Ecology offered technical assistance to the Board regarding some issues raised by the Board, but the Department did not formally concur with or endorse the Board's findings.**

On page 5 of the Report of Examination under the heading "Board's analysis" the fifth sentence of #6 reads: "The impairment analysis revealed no issues relative to impairment; the WADOE staff indicated concurrence with the no-impairment observation." **Ecology modifies this sentence to read as follows: The impairment analysis revealed no evidence of impairment to existing water rights.**

On page 5 of the Report of Examination under the heading **"Board's analysis"** the second sentence of #7 reads: "The FCWCB staff have discussed explicitly the Pepiot water right with WADOE ERO staff, and no issue related to the above has been highlighted by the WADOE staff." **Ecology deletes this sentence because the Board's recommendation is based on the Board's findings. Ecology offered technical assistance to the Board regarding some issues raised by the Board, but the Department did not formally concur with or endorse the Board's findings.**

On page 5 of the Report of Examination under the heading **"Board's analysis"** the fifth sentence of #7 reads: "The impairment analysis revealed no issues relative to impairment; the WADOE staff indicated concurrence with the no-impairment observation." **Ecology modifies this sentence to read as follows: The impairment analysis revealed no evidence of impairment to existing water rights.**

On page 7 of the Report of Examination under the heading **"Proposed project plans and specifications"** the second sentence of the paragraph reads: "The proposed use will involve the siting of a One new well with year-round pumping needs." **Ecology deletes this sentence. The proposed ground water well under this change application has already been constructed.**

On page 7 of the Report of Examination under the heading **"Tentative Determination"** the last sentence of the last paragraph on page 7 reads: "The applicant has actively used the water, and the change request would not affect other water rights owned by others." **Ecology modifies this sentence to read as follows: The water right holder (Pepiot) historically exercised Ground Water Certificate G3-00101C at the original place of use and the change/transfer to the new place of use and point of withdrawal would not impair existing water rights.**

On page 7 and continued on page 8 of the Report of Examination under the heading **"Tentative Determination"** the first paragraph on page 8 reads: "Third the allocated water amounts for change/transfer must be consistent with RCW 90.03.380, where the allowed annual consumptive quantity (ACQ) is estimated for a two-year, peak-year average per the most recent five-year period of use, and subject to RCW 90.14.140 exemptions: In this case:" **Ecology deletes this paragraph. RCW 90.03.380 only requires that an annual consumptive quantity (ACQ) calculation be performed if the application for change is requesting to add additional purposes of use or add additional irrigated acres. The application for change/transfer is requesting to entirely change the water right certificate to a new purpose of use and is not seeking to increase irrigated acres or add new uses to the existing water right.**

On page 8 of the Report of Examination the paragraph approximately half way down the page reads: "With pivot efficiency at 90%, the crop-use pattern and ACQ water demand

for the two-year, peak year average would have an estimated application of:” **Ecology modifies this paragraph to read as follows: The highest water demand is estimated at 329 acre-feet per year with a pivot efficiency at 90% and the historic crop rotational patterns. The lowest water demand year is estimated 272 acre-feet per year with a pivot efficiency at 90% and the historic crop rotational patterns. Ground Water Certificate G3-00101C authorizes the maximum quantity of 316 acre-feet per year.**

On page 8 of the Report of Examination the table shall be deleted and replaced with the following:

Water Use	Pot.-Wh Acre-ft/Acre (90% Eff.)	Pot.-Wh Water Use Acre-ft (50.8 acres)	Wh-BG Acre-ft/Acre (90%Eff.)	Wh-BG Water Use Acre-ft (50.7 acres)	BG-Wh.CBG Acre-ft/Acre (90%Eff.)	BG-Wh.C Water Use Acre-ft (50.6 acres)	Total
High Range	2.77	141	1.85	94	1.85	94	329
Low Range	2.41	122	1.48	75	1.48	75	272

On page 8 of the Report of Examination the paragraph just below the table reads: “Per the above table estimates, the likely range of use would be about 312-329 acre-ft. Thus the actual water use under the existing right equaled, or could have exceeded, the allowed certificated use of 316 acre-ft.” **Ecology modifies this paragraph to read as follows: Per the above table estimates, the likely range of use would be approximately 272-329 acre-ft. per year. Thus, the actual water use under the existing right at times appears to have exceeded the allowed certificated quantity of 316 acre-ft. per year.**

On page 9 of the Report of Examination the “Total” in the summary table for Max. Water Allocated from CG3-00101C (Annual) reads: “Up to 316 Acre-ft. And 500 gpd”. **Ecology modifies this total to read: Up to 316 acre-feet per year and 500 gpm.**

On page 9 of the Report of Examination the first sentence of the second paragraph reads: “Consequently, the change/transfer water right will be combined with water usage under the existing exemption—per WADOE interpretation—to serve the total feedlot needs.” **Ecology modifies this sentence to read as follows: Easterday Ranches plans to supplement the change/transfer of Ground Water Certificate G3-00101C by withdrawing an additional 354 gallons per minute and 505 acre-feet of water per year for stock watering purposes under the ground water permit exemption pursuant to RCW 90.44.050.**

On page 9 of the Report of Examination under the heading “*Hydrologic, and other technical investigations*” the second paragraph reads: “This observation has been confirmed in discussions with WADOE ERO staff.” **Ecology deletes this sentence because the Board’s recommendation is based on the Board’s findings. Ecology offered technical assistance to the Board regarding some issues raised by the Board, but the Department did not formally concur with or endorse the Board’s findings.**

On page 10 of the Report of Examination under the heading “**Verification of Existing Water Right**” the first sentence of the first paragraph reads: “As noted above, the existing water use retains a certificate of water right granted by the Washington State Dept. of Ecology.” **Ecology modifies this sentence because the sentence appears to imply that the existing water right holder will retain the water right to continue irrigation. The application for change/transfer proposes to change all of the existing water right purpose of use to a new purpose of use and no amount of the original water right will be retained for irrigation at the original place of use. Therefore, Ecology modifies the sentence to read as follows: As noted above, the existing perfected ground water certificate was issued on October 7, 1988, by the Washington State Dept. of Ecology.**

On page 11 of the Report of Examination the second sentence of the first paragraph reads: “The Water Board has conducted a field examination to verify the information contained within the applicant’s current water rights and supporting technical information.” **Ecology modifies this sentence to read: The Water Board has conducted a field examination to verify the information contained within the current water right records and supporting technical information.**

On page 11 of the Report of Examination under the heading “**Review of Potential Impairment**” the first sentence of the first paragraph reads: “Because the proposed action will not increase the existing certificated water use (with change modifications), or increase the water amount put to allowed beneficial use, or likely affect other existing water rights (or applications for new water rights), no impairment is perceptible.” **Ecology modifies this sentence because it is unclear as to what the Board means by “with change modifications.” The Board’s language implies that the existing certificate has previously been modified (through a change process), which Ecology understands is not the case. The sentence shall be amended to read as follows: Because the proposed change/transfer will not increase the existing certificated water use or increase the amount of water put to historic beneficial use, other existing water rights will not be impaired.**

On page 12 of the Report of Examination the fourth paragraph on the page reads: “Given the fact that no increase in the water withdrawal from the existing groundwater management source will occur relative to that permitted and allowed for beneficial use, there is no reason to expect any impairments to other water sources, consistent with the conditions and provisions provided under the existing water right modification order granted by the WADOE. Also, because the change/transfer proposed by the applicant does not affect withdrawals from new water sources or increase existing allowed net withdrawals/diversions from that currently permitted, the change/transfer request does not affect local conditions surrounding the status quo for water use, as permitted by WADOE.” **Ecology modifies this paragraph to read: Under the proposed change/transfer, there will be no increase in the quantity of water withdrawn from the same body of public ground water at the new place of use relative to the original place of use for Ground Water Certificate G3-00101C.**

On page 12 of the Report of Examination the last sentence of the fifth paragraph reads: "The Water Board does include conditions within this ROE to ensure that the public interest affecting water use is protected, and that they are consistent with actions that would be pursued by WADOE to avoid future or potential impairment problems or regulation actions." **Ecology modifies this paragraph to read: The Water Board does include conditions within this ROE to avoid impairment issues and to ensure that the change/transfer is not contrary to the public interest.**

On page 13 of the Report of Examination the first paragraph reads: "The proposed action does provide for a continuation of the existing beneficial use as stated within the certificate of water right, increasing the economic benefits to the state and local area by allowing for continued use and development of irrigated lands. The development is taking place in the land-use management area of Franklin County." **Ecology deletes this paragraph in its entirety because the proposed change/transfer is changing the entire amount of the water right to a new purpose of use. No right for irrigation purposes under the change/transfer will remain.**

On page 13 of the Report of Examination under the heading "**Consideration of Pending Applications**" the third paragraph reads: "Public notice has been provided for requesting all water right holders within Franklin County to submit existing or new water right change/transfer applications to the Franklin County Water Board—or the WADOE. Applications received by the WADOE or Water Board are first reviewed for accuracy, completeness, and purpose to ensure they fall within the purview of the agency's and Board's jurisdiction. Those that are found wanting are first referred back to the applicant for re-submittal or withdrawal. The remaining ones are acted on by a first-come, first-serve basis, taking into account received application's priority date and the technical/legal review requirements thereof." **Ecology modifies this paragraph to read as follows: Public notice has been provided for requesting all water right holders within Franklin County to submit existing or new water right change/transfer applications to the Franklin County Water Board or the WADOE. Applications received by the Water Board are first reviewed for accuracy, completeness, and purpose to ensure they fall within the purview of the Board's jurisdiction. After applications are formally accepted by the Board, the applications found to be deficient or incomplete are first referred back to the applicant for re-submittal or withdrawal. The remaining applications are required to be acted on by a first-come, first-served basis based on the pending applications' priority dates.**

On page 14 of the Report of Examination under the heading "**PROVISIONS**", the third provision reads: "Use of water under this authorization shall be contingent upon the water right holder's utilization of up-to-date water conservation and best management practices, taking into account cost effectiveness for operations and economic viability." **Ecology modifies the provision to read as follows: Use of water under this authorization shall be contingent upon the water right holder's utilization of up-to-**

date water conservation practices and maintenance of efficient water delivery systems consistent with established regulation requirements and facility capabilities.

On page 14 of the Report of Examination under the heading "**PROVISIONS**", the fourth provision reads: "The existing change and superseding certificate for CG3-00101C shall not exceed 500 gpm, 316 acre-ft. annually, for stock watering purposes, as designated by the PCHB 01-073 (2001), and under the Water Board Decision section." **Ecology modifies this provision to read: The existing change/transfer for CG3-00101C shall not exceed 137 gallons per minute, 66 acre-feet per year for Stock Water Drinking; 363 gallons per minute, 250 acre-feet per year for Stock Cooling, Dust Control and other associated feedlot uses, continuously year round.**

On page 15 of the Report of Examination under the heading "**PROVISIONS**" the second paragraph of #8 reads: "A complete well log will be prepared and chip samples will be collected for aquifer/formation verification. WADOE staff shall be consulted prior to well drilling, for well construction recommendations." **Ecology deletes this provision because Ecology does not require chip samples to be collected and the ground water well associated with the change/transfer has already been constructed.**

On page 15 of the Report of Examination under the heading "**PROVISIONS**" the 11th provision containing two paragraphs reads: "An approved measuring device(s) shall be installed and maintained for the sources (all points of withdrawal) indentified herein in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC."

The second paragraph reads:

"Water use data (Qi and Qa) shall be recorded weekly and submitted annually to Ecology by January 31st of each calendar year typically. To the extent possible, water use shall be measured separately for stock drinking versus stock cooling-dust control and other related measures." **Ecology modifies the paragraphs to read as follows: An approved measuring device shall be installed and maintained for each of the sources identified herein in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC. Water use data shall be recorded weekly and shall be submitted annually to Ecology by January 31 each year.**

Water uses shall be measured separately for (1) stock water drinking and (2) stock cooling and dust control purposes.

On page 15 of the Report of Examination under the heading "**PROVISIONS**" the 15th provision reads: Department of Ecology personnel, upon presentation of proper credentials, and prior notification, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions, but only to the extent otherwise allowed by law." **Ecology modifies this provision to read: Department of Ecology**

personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions.

On page 15 of the Report of Examination under the heading "**PROVISIONS**" the following provisions shall be included:

- This authorization to make use of public waters of the State is subject to existing rights, including any existing rights held by the United States for the benefit of Indians under treaty or otherwise.
- A certificate of water right will not be issued until a final examination is made.
- Nothing in this authorization shall be construed as satisfying other applicable federal, state, or local statutes, ordinances, or regulations.

You have a right to appeal this decision. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals & Application for Relief
Coordinator
PO Box 47608
Olympia, WA 98504-7608

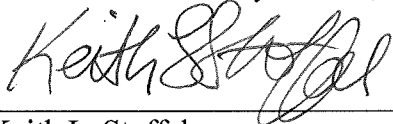
Deliver your appeal in person to:

OR The Department of Ecology
Appeals & Application for Relief
Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Keith L. Stoffel
Department of Ecology
Eastern Regional Office
4601 North Monroe Street
Spokane, WA 99205

DATED this 11th day of June, 2009 at Spokane, Washington.



Keith L. Stoffel
Section Manager
Water Resources Program
Eastern Regional Office

KLS:HS:ka

cc: Franklin County Water Conservancy Board
Center for Environmental Law & Policy
Five Corners Family Farmers